

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 1-25 are pending after entry of the amendments set forth herein.

Claims 1-23 were examined. Claims 1-3, 5-12 and 14-23 were rejected. Claims 4 and 13 were allowed.

Support for new claims 24-25 can be found in the specification at pages 45-46 and throughout the specification, and in Figs. 33-35.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

In the Official Action of March 4, 2005, claims 5-12 and 14-23 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Koros et al., U.S. Patent No. 5,167,223. The Examiner indicated that Koros et al. discloses a first blade 700, second blade 13, actuator 45,55, locking mechanisms 400,500, and foot 11. Applicants respectfully submit that reference numeral 11 of Koros et al. refers to a hook at the end of an aortic valve retractor 10 (see column 7, lines 7-10) and is not configured to engage an external surface of the patient's body, in contrast to what is currently claimed. Claim 5 has been further amended to recite that the engagement of the external surface of the patient's chest occurs outside of the opening formed in the patient's chest. This feature is clearly also not met by Koros et al., as aortic valve hook 11 has to be inserted into the opening in order to perform retraction of the aortic valve.

Still further, claim 5 recites that the first and second blades are coupled to the frame. Although the "first blade 700" defined by the Examiner is coupled to the "frame 30", the "second blade 13", which is not actually a blade at all, but a mitral valve retractor 15 (see column 7, lines 10-12) is coupled to moveable arm 40. Thus, Koros et al. fails to disclose a frame with first and second blades coupled to the frame, as claimed.

With regard to claim 10, Koros et al. shows a shoe coupled to one of the spreader member and the first and second blades wherein the shoe extends outside of a space bordered by the spreader member and the first and second blades. As noted above, the "foot 11" identified by the Examiner, is actually a hook at

the end of an aortic valve retractor. Such hook must extend into the space bordered by the “spreader member” and “first and second blades” of Koros et al. in order to perform aortic valve retraction.

As to claim 14, Koros et al. fails to disclose a shoe coupled to at least one of the spreader and the first and second blades and extending away from the spreader, blades and the opening in the patient’s chest, as already noted above.

With regard to claim 20, the Examiner took the position that the entire device of Koros et al. could be rotated by hand, thus causing the foot and blade to be rotatable about a second axis transverse to the first axis. Although this is not disclosed or suggested by Koros et al., since once engaged to perform the retraction, there would be no possibility of rotating the entire device of Koros et al., Applicants have nevertheless amended claim 20 to even more clearly define over the apparatus of Koros et al. Claim 20 has been amended to further recite that the foot and second blade rotate relative to the frame member. This is not the case even in the speculation by the Examiner that the entire device of Koros et al. could be rotated, as the components in such case would not be rotating relative to the frame member.

Claim 22 has been amended to recite that the shoe is coupled to one of the first and second blades. The Examiner has not indicated what has been interpreted as a “shoe” in Koros et al. so it is assumed that the Examiner is relying upon what was identified as a foot, i.e., hook 11 of aortic valve retractor 10. Neither hook 11 nor retractor 10 are coupled to “first blade 700” or “second blade 13”. Rather, retractor 10 is coupled to what the Examiner has identified as frame 30. Accordingly, it is respectfully submitted that Koros et al. fails to anticipate claim 22, for at least the reasons provided.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 5-12 and 14-23 under 35 U.S.C. Section 102(b) as being anticipated by Koros et al., U.S. Patent No. 5,167,223, as being no longer appropriate.

Claims 10-12 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Giglio et al., U.S. Patent No. 5,520,610. The Examiner asserted that Giglio et al. discloses first and second blades 13 attached to frame 1 and movable arm 2. The Examiner further indicated that Giglio et al. discloses a foot 38 that is movable vertically relative to the frame. It is assumed that the Examiner meant to interpret feature 38 of Giglio et al. as a shoe.

Claim 10 has been amended above to further define the recited shoe as extending outside of a space bordered by the spreader member and the first and second blades. Clearly, the retractor paddle 38 of Giglio et al. is positioned within the space bordered by incision retractors (blades) 13, and must be, in order to perform its retraction function.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 10-12 under 35 U.S.C. Section 102(e) as being anticipated by Giglio et al., U.S. Patent No. 5,520,610, as being no longer appropriate.

Claims 1,2,10 and 11 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Tyagi, U.S. Patent No. 5,755,660. The Examiner asserted that Tyagi discloses a surgical retractor having a frame member 5, blades 13,14 and a foot or shoe 15 attached to an arm coupled to the frame.

The “foot or shoe 15” of Tyagi is actually a third retractor used to engage the opening in the patient as clearly shown in Fig. 1 and described at column 3, lines 29-30. Claim 1 has been amended above to further define the recited foot as being located outside of a space defined between the first and second retractor blades, ad having a support surface configured to engage an external surface of the patient’s body, outside of the incision. Clearly, the retractor 15 of Tyagi et al. is not so configured, as it is configure to engage the incision and retract the incision to enlarge the opening.

Claim 10 has been amended to recite that the shoe extends outside of a space bordered by the spreader member and the first and second blades, which is clearly not the case with retractor 15 of Tyagi.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1,2,10 and 11 under 35 U.S.C. Section 102(e) as being anticipated by Tyagi, U.S. Patent No. 5,755,660, as being no longer appropriate.

New claims 24-25 depend from claims 2 and 1, respectively, and still further define over Tyagi. Claim 24 recites that the foot is located outside of a space defined between the first and second arms recited in claim 22. Tyagi’s retractor 15 is located between arms 2 and 8. Claim 25 recites that the foot of claim 1 is configured to engage an external surface of the patient’s chest, which is clearly not the case with the retractor 15 of Tyagi.

Claims 1,3 and 20-23 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Giglio et al., in view of Koros et al. Neither Giglio et al. nor Koros et al., whether taken alone or in any proper combination discloses, teaches or suggest a surgical retractor comprising a frame member, first and second retractor blades coupled to the frame member, the retractor blades having retraction surfaces configured to engage an incision in a patient’s body, wherein at least one of the first and second retractor blades is movable with respect to the frame member along a first lateral axis to position the retractor blades toward or away from each other; a foot coupled to one of the frame member and the first and second blades, the foot being located outside of a space defined between said first and second retractor blades, the foot having a support surface configured to engage an external surface of a patient’s body,

outside of the incision, wherein the foot is adjustable in a vertical direction relative to the frame member and transverse to a direction in which the blades extend; a locking mechanism for locking the foot and the frame member in a selected relative position along an axis which is transverse to the first axis; and Koros et al. discloses a retractor with valve retractors extending into the space provided by the retractor. Giglio et al. provides a retractor with paddles 38 positioned within the space defined by retractor blades 13.

With regard to claim 20, the references relied upon do not provide a teaching or suggestion of providing a second blade and foot that are rotatable together, with respect to the frame member, as claimed.

As to claim 23, the "shoe38" of Giglio is coupled to bar 6 and not to one of the first and second blades. Koros et al. does nothing to overcome this deficiency.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1,3 and 20-23 under 35 U.S.C. Section 103(a) as being unpatentable over Giglio et al., in view of Koros et al. as being inappropriate.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

Atty Dkt. No.:GUID-006CONS
USSN: 09/480,826

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-006CONS5.

Respectfully submitted,

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